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290620Z Jul 05

ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	CIAE-00	INL-00	DODE-00
	DS-00	EB-00	UTED-00	VC-00	H-00	TEDE-00	INR-00
	IO-00	LAB-01	L-00	VCE-00	DCP-00	NSAE-00	OIC-00
	PA-00	GIWI-00	PRS-00	P-00	SP-00	SSO-00	SS-00
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FM AMEMBASSY GABORONE  
TO SECSTATE WASHDC 2304  
INFO SOUTHERN AFRICAN DEVELOPMENT COMMUNITY  
HQ USEUCOM VAIHINGEN GE  
WHITE HOUSE NSC WASHINGTON DC

UNCLAS GABORONE 001045

SIPDIS

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AF/S FOR MUNCY

E.O. 12958: N/A

TAGS: PHUM PGOV BC

SUBJECT: COURT DISMISSES DEPORTED PROF'S APPEAL

REFERENCE: GABORONE 738

1. (U) Botswana's Court of Appeal dismissed on July 27 the case of Australian citizen and former University of Botswana Professor Kenneth Good who was declared a prohibited immigrant on February 18, 2005. President Mogae decided to deport Good on the grounds that he posed a threat to national security. After securing a stay against his deportation order, Good unsuccessfully challenged the decision as unconstitutional and was removed from the country on May 31 (reftel). The Court of Appeal found that provisions in Botswana's Immigration Act exempting the President from having to provide reasons to declare an alien a prohibited immigrant did not violate Botswana's constitution as Good's attorneys had argued.

2. (U) The Court's verdict, however, also admonished the Government to amend its laws to conform to its international commitments. Representatives for Good had argued that the Government had signed various international instruments which would have protected Good from deportation. However, Article 13 of the Covenant on Civil and Political Rights, which requires that one receive a hearing before being declared an illegal immigrant, allows for an exception where "compelling reasons of national security" exist. The GOB cited such reasons in explaining its action.

3. (U) According to Joao Salbany, a member of Good's legal team, they intend to pursue the matter with the African Commission on Human Rights.

4. (SBU) Comment: The saga of Prof. Good's deportation has tarnished the GOB's record as a relatively liberal democracy that tolerates dissent. Any notoriety Good has enjoyed resulted directly from the Government's decision to deport him. The assertion that he posed a threat to national security was dubious at best. The incident confirmed, however, the independence -- and conservatism -- of the judiciary in Botswana.

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